

BUREAU OF AUTOMOTIVE REPAIR

INITIAL STATEMENT OF REASONS

HEARING DATES:

Tuesday, July 5, 2011 at 10:00am
Department of Consumer Affairs
Hearing Room
1625 North Market Blvd., S-102
Sacramento, CA 95834

**SUBJECT MATTER OF
PROPOSED REGULATIONS:**

Smog Check Licensing Restructure

SECTIONS AFFECTED:

§§ 3306, 3340.10, 3340.15, 3340.16.4, 3340.16.5,
3340.17, 3340.22, 3340.22.1, 3340.23, 3340.28,
3340.29, 3340.30, 3340.31 and 3351.1, Articles 2,
5.5 and 6, Chapter 1, Division 33, Title 16,
California Code of Regulations.

SPECIFIC PURPOSE OF REGULATORY PROPOSAL:

The Bureau of Automotive Repair (BAR or Bureau) is proposing the following amendments to existing regulations:

- I. Revise the Smog Check technician license classifications to reflect current job tasks and marketplace needs. Establish the Smog Check Inspector license, Smog Check Repair Technician license and Smog Check Repair-Only station license.
- II. Repeal the Intern Technician license classification, and the Basic and Enhanced Area technician designations.
- III. Incorporate by reference the updated form R-12 (01/11) "Application for Smog Check Station License."
- IV. Incorporate by reference the updated form (01/11) "Inspector/Tech App 1A "Application for Initial Smog Check Inspector, and/or Smog Check Repair Technician License."
- V. Require a separate service sign for Smog Check Repair-Only stations and stations that only inspect and/or repair vehicles powered by diesel engines.
- VI. Remove the incorporated *Change of Name/Address/Corporate Officers or Directors*, Form R-8 (Rev. 05/25/01) from §3306(c) and relocate the form to §3351.1(d).

VII. Make minor, technical, grammatical and editorial changes to update the regulatory text.

A detailed explanation of the changes are as follows:

1. Amend Section 3306 of Article 2, Chapter 1, Division 33, Title 16, California Code of Regulations, as follows:

- a. Amend subsection (c) by removing “In the event of a change of business name or address, the licensee shall submit to the bureau a Change of Name/Address/Corporate Officers or Directors, Form R-8 (Rev. 05/25/01), which is hereby incorporated by reference.”

The incorporated *Change of Name/Address/Corporate Officers or Directors*, Form R-8 (Rev. 05/25/01) will be removed from §3306(c) and relocated to §3351.1(d). Incorporating this form in §3351.1(d) will suit the original purpose of the form and provide all automotive repair dealers (ARD) a mechanism for transmitting updated license information to the Bureau. This form was originally incorporated in §3306(c), which restricted the use of the form to station licenses. Deleting the form from §3306(c) is necessary because having the form incorporated in two different sections of regulation that pertain to the same license group is redundant and may cause confusion for licensees reviewing BAR regulations.

2. Amend Section 3340.1 of Article 5.5, Chapter 1, Division 33, Title 16, California Code of Regulations, as follows:

- a. Amend section 3340.1 to add a definition for Repair-Only station, Smog Check Inspector, and Smog Check Repair Technician.

This addition is necessary to incorporate new license classifications as a result of the license restructure.

3. Amend Section 3340.10 of Article 5.5, Chapter 1, Division 33, Title 16, California Code of Regulations, as follows:

- a. Amend subsection (a) to update the date on form R-12 “Application for Smog Check Station License” from (6/96) to (01/11) and add “, which is hereby incorporated by reference,”.

This edit will incorporate the revised and up-to-date Smog Check station license form into BAR regulations.

- b. Amend subsection (f) by removing the Smog Check Station Application Form 79-4 (5/89) that is printed in regulation and the instructions for the application.

This change will remove Form 79-4 (5/89) from regulation. This form is no longer used, and removing the old form makes BAR regulations clear and concise.

- 4. Amend Section 3340.15 of Article 5.5, Chapter 1, Division 33, Title 16, California Code of Regulations, as follows:

- a. Amend subsection (b) by adding “an inspector or”.

This minor edit is necessary due to the addition of the Inspector license classification.

- b. Amend subsection (c) by removing the entire section.

Removing this requirement is necessary because the Bureau proposes to repeal the Intern Technician license, rendering this subsection useless.

- c. Amend subsection (d) to remove “license and” then add “, inspector, and/or”.

This edit is necessary due to the addition of the Inspector license classification.

This change rennumbers subsection (d) to (c).

- 5. Add Section 3340.16.4 of Article 5.5, Chapter 1, Division 33, Title 16, California Code of Regulations, as follows:

- a. This addition creates a new section for the Smog Check Repair-Only Station requirements. This section details the requirements in order to become licensed as a Repair-Only Station.

- 6. Amend Section 3340.16.5 of Article 5.5, Chapter 1, Division 33, Title 16, California Code of Regulations, as follows:

- a. Remove “a basic” and add “any program area” and “and subsection (a) of section 3340.16.4”.

Expand the requirements listed in section 3340.16.5 to all program areas for Test-and-Repair stations and require them to meet the requirements of subsection (a) of section 3340.16.4.

- b. Remove the remainder of subsection (a) to subsection (b).

This text is unnecessary because these requirements have been moved to section 3340.16.4, which details the Repair-Only station requirements.

- c. Remove subsection (b)(2) in its entirety.

This requirement has been moved to section 3340.16.4 and is referenced as a requirement to become a Test-and-Repair station.

This edit changes subsection (b) subparagraph (3) to (2).

- 7. Amend Section 3340.17 of Article 5.5, Chapter 1, Division 33, Title 16, California Code of Regulations, as follows:

- a. Amend subsection (a) and (b) to add “test-only and test-and-repair”.

This edit will provide clarity that subsection (a) and (b) only apply to Test-Only and Test-and-Repair stations. This section does not apply to Repair-Only stations because it is not necessary for them to have a BAR certified emissions inspection system.

- 8. Amend Section 3340.22 of Article 5.5, Chapter 1, Division 33, Title 16, California Code of Regulations, as follows:

- a. Amend section 3340.22 to add “test-only and test-and-repair”.

This edit requires Smog Check Test-Only and Test-and-Repair stations to display a sign that meets the specifications listed in the section.

- 8. Amend Section 3340.22.1 of Article 5.5, Chapter 1, Division 33, Title 16, California Code of Regulations, as follows:

- a. Amend subparagraph (2) of subsection (a) by adding “Smog check repair-only stations.”

This edit requires Repair-Only stations to meet separate sign requirements.

This edit adds subparagraph (2) to subsection (a) and renumbers subparagraph (2) to (3), (3) to (4).

- b. Amend subsection (a) by adding subparagraph (5) “Smog check stations that only inspect and/or repair vehicles powered by diesel engines or engines originating from diesel compression ignition designs.”

Separate sign requirements are necessary for Smog Check stations that only inspect and/or repair vehicles powered by diesel engines. This sign requirement will inform consumers when diesel vehicles only are inspected and/or repaired at a particular station.

9. Amend Section 3340.23 of Article 5.5, Chapter 1, Division 33, Title 16, California Code of Regulations, as follows:

- a. Amend section 3340.23 by adding “Inspector or” in four places and remove “and the appropriate area” in three places.

These changes are needed due to the creation of a separate BAR license for Smog Check Inspectors.

10. Amend Section 3340.28 of Article 5.5, Chapter 1, Division 33, Title 16, California Code of Regulations, as follows:

- a. Amend subsection (a)(1) to delete the current text and replace it with “Smog Check Inspector. The Smog Check Inspector license allows an individual to inspect, and certify the emissions control systems on vehicles subject to the Smog Check Program in all areas of the state. The Smog Check Inspector license expires pursuant to the requirements in subsection (d) of section 3340.29 of this Article.”

This section is necessary due to the addition of the Smog Check Repair Technician license.

- b. Amend subsection (a)(2) to incorporate the Smog Check Repair Technician definition into regulation. This addition requires minor, grammatical, punctuation and formatting changes.

These changes have been made to the Intern Technician license which is being repealed and replaced with new requirements for the Smog Check Repair Technician license.

- c. Remove subsection (a)(3) in its entirety.

This edit replaces the old Advanced Emission Specialist Technician license with new, updated license classifications. This proposed change will delete the Advanced Emission Specialist license in favor of licenses that would apply to both Basic and Enhanced Areas of the Smog Check program. These changes are necessary because the knowledge, skills and abilities of a technician are essentially the same, regardless of the geographic program designations. This proposed change will ensure that the skills needed to perform the duties of a certain license are consistent statewide.

- d. Amend subsection (b) to remove “The qualifications to take an examination for technician licenses are as follows:” and add “Smog Check Inspector Qualifications”. Remove in its entirety the current (b)(1). In subsection (b)(2), remove the following text: “The Basic Area Technician license” and “Basic Area Technician”. Add to subsection (b)(2) “The Smog Check Inspector license” and “Smog Check Inspector”.

These technical changes are being done to accommodate the proposed Smog Check Inspector license and the qualifications that are required to take the examination for that license.

- e. Amend subsection (b) by adding new subparagraphs (1)(A) and (B), “(1) The applicant must provide proof, satisfactory to the bureau, of: (A) The successful completion of bureau specified engine and emission control training within the last two years; or (B) At the bureau’s discretion, successfully complete and pass a bureau specified competency assessment within the last two years, and successfully complete and pass the bureau’s smog check training within the last two years; or”.
- f. Amend subsection (b)(1)(C) by adding “proof,” and “Smog Check Repair Technician qualifications established in paragraph (c)(1) or (2) of this section, and successfully complete and pass the bureau’s smog check training within the last two years.”
- g. Furthermore, remove current subsections (b)(2)(A) and (b)(2)(B) in their entirety. These edits remove the requirements for the Basic Area Technician license, which is being absorbed by the Smog Check Inspector and Smog Check Repair Technician sections.
- h. Amend subsection (b) by adding subparagraph (2). Add text “Update Training. The bureau may require update training as part of the requirements for license renewal.”, “Smog Check Inspector”, “proof,” “to the bureau,” “of”, “specified”, “At the bureau’s discretion, a Smog Check Inspector” and “update training”. In addition, the following text will be removed: “an initial license or”, “evidence”, “specified”, “courses”, “Update training courses provide training on new automotive technology that affects emission testing and/or repairs. Update training need not exceed 20 hours.”, “Technicians”, “course”, “, at the bureau’s discretion. Technicians who elect to take the challenge test shall take it at a bureau certified training institution that is certified to provide that update training course. Information regarding training courses will be available through a bureau toll free telephone number, published in the technician license renewal notice.”

This edit renumbers (b)(2)(C) to (b)(2). In addition, remove the current subsection (b)(3) in its entirety.

- g. Add subsections (c), (d), (e), and (f).

Subsection (c) provides the qualifications for the Smog Check Repair Technician license. Subsection (d) specifies that the Bureau may issue a single license to applicants that pass an exam for both license types. Subsection (e) explains how a Basic Area and Advanced Emission Specialist Technician will renew their license as either a Smog Check Inspector, Smog Check Repair Technician, or both. Subsection (f) provides for alternate qualifications in the event an applicant does not possess certification pursuant to subsection (c)(1)(D).

Remove subsections (b)(3), (b)(4), (b)(3)(A)(1.)-(6.), (b)(3)(B), (b)(3)(C) and (b)(4) in its entirety.

- 11. Amend Section 3340.29 of Article 5.5, Chapter 1, Division 33, Title 16, California Code of Regulations, as follows:

- a. Amend subsection (a) by adding “an inspector or”, “(01/11) Inspector/Tech App 1A “Application for Initial Smog Check Inspector, and/or Smog Check Repair Technician License,” and “the fee shall not be refunded and a license shall not be issued.” Remove “SMOG TECH 1 LICENSE (11/07), ““Application for Smog Check Inspector and/or Technician License,””, “An application shall be rejected, and the fee shall not be refunded, if” and “The applicant shall submit a new application with appropriate documents and an application fee of \$20.00 when an application has been rejected for failure to file a complete application.”

These edits make minor technical corrections to existing regulatory text, incorporates by reference a new general application for Smog Check technicians and inspectors. Applications with missing information will not be issued a license. The Bureau will attempt to obtain the missing information from the applicant to correct the deficiency and complete the application process.

- b. Amend subsection (b) by adding “an inspector or”, “and pass”, “A qualified applicant may attempt to pass the examination two times per application. After two attempts the applicant”, “new”. Remove the following: “of \$45”, “technician”, “technician’s”, “,or”, “again”, “an”, and (b)(3) in its entirety.

This edit incorporates the Inspector license. Additionally, this change removes the \$45 examination fee from regulation. This change is necessary because the Bureau does not specify the cost of the examination.

- c. Remove subsection (d) in its entirety.

This edit removes text regarding the Intern Technician license. The Bureau will no longer license technicians under this classification due to lack of use by the industry. Only a handful of Intern Technician licenses are issued on a yearly basis. Supporting this license classification is a poor use of Bureau time and resources.

- d. Amend the current subsection (e) to add “The inspector and technician license shall expire two years from the last day of the month in which the license was issued, unless renewed, suspended, rescinded, or terminated by operation of law.” and “ The bureau may advance the expiration date to correspond with an existing inspector or technician license expiration date.” Remove “A technician's license shall expire on the last day of the month in which the second birthday of the technician occurs after the date of issuance of the license. Initial I” and “Once a license has been issued that expires in the birth month, subsequent renewal licenses will expire on the last day of the birth month, two years later.”

This amendment is necessary to incorporate the Bureau’s new Inspector license classification. Further, this edit provides clarity on when a technician licensee expires.

This edit rennumbers subsection (e) to (d).

- e. Amend subsection (f) by adding “inspector or” and “renewal fee of \$20 and pay the examination fee, as applicable, and successfully complete and pass the appropriate examination”. Remove the Technician License Renewal Application from regulation.

Technicians and Inspectors can renew their license by simply paying the \$20 renewal fee and passing the appropriate examination.

This revision also rennumbers subsection (f) to subsection (e).

- f. Add a new subsection (f) to regulation.

This section describes the criteria in which a Smog Check technician license examination may be based, and may require technicians with a citation and/or disciplinary history to complete additional qualifications to renew a license.

- 12. Amend Section 3340.30 of Article 5.5, Chapter 1, Division 33, Title 16, California Code of Regulations, as follows:

- a. Make minor grammatical, punctuation and formatting changes to incorporate the general requirement for the Inspector license into regulations.

13. Amend Section 3340.31 of Article 5.5, Chapter 1, Division 33, Title 16, California Code of Regulations, as follows:
 - a. Make minor grammatical, punctuation and formatting changes to incorporate the general requirement for the Inspector license into regulations.
14. Amend Section 3351.1 of Article 6, Chapter 1, Division 33, Title 16, California Code of Regulations, as follows:
 - a. Amend subsection (d) by removing “Firm”, “or”, “Any”, “firm”, “and”, “any change in the firm’s”, “be promptly communicated to the bureau in writing with a request for a replacement registration certificate.”. In addition, add “Business”, “, corporate officers or directors, and/or”, “business or mailing”, “the licensee or registrant”, “submit to the bureau a Change of Name/Address/Corporate Officers or Directors, form R-8 (Rev. 05/25/01, which is hereby incorporated by reference within 14 calendar days or the license and/or registration shall cease to be valid.”, and “Any change in the members of a Limited Liability Company (LLC) require a new application and fees, unless the LLC articles of incorporation expressly indicate that a change of members does not constitute a change of business.”.

These changes provide a standardized medium for licenses to transmit changes regarding a business name, address and corporate officers or director to the Bureau. Further, this will assist BAR staff in providing quicker license updates and help ensure changes are accurate. Requiring licensees to transmit changes in license information within 14 days will allow BAR to invalidate inactive licenses. Any changes to a Limited Liability Company (LLC) require a new application and fee, unless the articles of incorporation expressly indicate otherwise.

Incorporation by Reference

Section 3340.10 incorporates by reference form R-12 (01/11) "Application for Smog Check Station License. This application replaces the version dated (9/96) and includes the options to apply for a license to operate as a Test-Only station, Repair-Only station, or Test-and-Repair station.

Section 3340.29 incorporates by reference the (01/11) Inspector/Tech App 1A “Application for Initial Smog Check Inspector, and/or Smog Check Repair Technician License.” This application replaces the version dated (11/07) and includes the options to apply for a license to work as a Smog Check Inspector, and/or a licensed Smog Check Repair Technician.

Section 3340.51 incorporates the Change of Name/Address/Corporate Officers or Directors, form R-8 (Rev. 05/25/01). This form provides ARDs a medium for transmitting changes to a business name, address and corporate officers or directors to the Bureau.

The incorporation by reference of these applications is appropriate since publishing these documents in the California Code of Regulations would be cumbersome, unduly expensive, impractical and unnecessary. If anyone should wish to examine the revised applications, they are available upon request from BAR. The revised applications will also be available for review throughout this rulemaking process and will be available on BAR's Web site at www.smogcheck.ca.gov.

FACTUAL BASIS / RATIONALE

Background:

The Bureau of Automotive Repair (BAR), within the Department of Consumer Affairs, is the state agency charged with implementation and administration of the Smog Check Program (Program). The Program is designed to reduce air pollution from mobile sources, such as passenger vehicles and light-duty trucks, by requiring that these vehicles meet specific emission standards.

Since the Program's inception in 1984, BAR has worked jointly with the automotive inspection and repair industry as a partner in administering a fair and competitive marketplace. Over the years program changes and advancements in automotive technology have left the existing licensing structure behind and disconnected from industry and the marketplace. The continued success of the Program, in part, depends on a license structure that appropriately aligns with industry practices and the marketplace demands.

With this in mind, BAR retained the services of two independent consultants to assess the regulatory structure for licensing individuals and stations providing Smog Check inspections. The consultants' evaluations built upon a formal job assessment conducted by BAR and DCA in 2006. These evaluations included soliciting input from station owners, technicians, fleet supervisors, and educators. Their reports concluded that the Program's licensing strategies were outmoded and in need of an update to reflect current marketplace needs. One consultant described the current strategy as an attempt to use a "one-size-fits all" approach, where the one size fails to represent the varying jobs of technicians working in different station types.

Under this proposal, BAR will realign the licensing classifications and requirements to reflect industry needs. The new classifications will replace the outdated "one-size-fits-all" strategy with license classifications that actually represent best practices of the industry and matches license requirements with tasks performed. This means stations

and technicians will have the flexibility to choose a license that best represents the services they provide – Inspection or Repair, or both.

| The new strategy will provide the following license options: | |
|---|-------------------------|
| Technician | Station |
| *Smog Check Inspector | Test-Only Station |
| *Smog Check Repair Technician | *Repair-Only Station |
| | Test-and-Repair Station |

* Proposed license classification

This proposal is generally based on recommendations made by the consultants as well as discussions and input from the participants of several industry and public workshops. From September 2009 – July 2010 BAR held workshops concerning the License Restructure in Sacramento, Hayward, Diamond Bar, Woodland Hills, El Cajon and Yuba City.

Health and Safety Code Sections (H&S) 44010.5, 44014, 44014.5, 44031.5, 44032 and 44045.5 establish the licensing requirements, as it relates to the Smog Check Program. As a matter of consumer protection, these laws require inspections and repairs to be performed by licensed stations using qualified technicians. This includes the existing Test-Only and Test-and-Repair stations, as well as the proposed Repair-Only station. These laws also provide the authority for multiple technician licensing classifications based on the jobs that they actually perform.

Technician Licenses

The current technician licensing strategy was created before the creation of Test-Only stations at a time when there was only one type of station and technicians needed to possess a comprehensive knowledge of both inspecting and repairing vehicles. Today, there are two different station types with different job duties, yet there is only one technician license. Consequently, individuals who work in a Test-Only station must demonstrate a level of knowledge, skills, and abilities (KSAs) beyond the actual work they perform. In fact, Test-Only stations and the licensees who work in these stations are prohibited by law from performing repairs of any kind, especially smog-related repairs. The separation of tests from repairs originates from requirements set forth by amendments to the Federal Clean Air Act of 1990 and the resulting implementation rules. California Health and Safety Code (H&S) Sections 44010.5, 44014, 44014.5, 44031.5, 44032 and 44045.5 establish the licensing rules related to the Test-Only stations and the proposed Repair-Only stations.

The Program's existing license strategy is not only detached from the best practices of the automotive repair marketplace, it is inconsistent with national practices related to

establishing appropriate license qualifications. The Federal Equal Employment Opportunity Commission and the American Psychological Association work together to ensure fair employment practices and, in doing so, specify that license qualifications should appropriately represent the KSAs of the jobs the licensees are tasked with completing. For more information, refer to the Uniform Guidelines on Employee Selection Procedures in the Code of Federal Regulations Title 29, Part 1607. The establishment of an Inspector license for those who perform inspections, and a Repair Technician license for those who perform repairs will appropriately align the licenses with the work or job tasks performed.

With respect to repairs, the current “one-size-fits-all” approach has set a low standard where individuals without any experience are licensed to perform repairs while, at the same time, other experienced and highly skilled technicians are deterred from becoming licensed. Basically, the current strategy attempts to cover the broad range of KSAs for the job of inspection and the job of repair under one license. Consequently, it is a cumbersome process that requires all, including proficient, technicians to go back through rudimentary and in some cases duplicative training. In effect, the Smog Check Program misses an opportunity to recruit skilled technicians because the old licensing structure is not relevant to their abilities. Furthermore, many of these proficient technicians work in shops that are not listed Smog Check stations, namely because they choose not to invest in the cost of the test equipment. However, consumers still consider these stations to be quality repairs shops that specialize in the repair of a specific brand of vehicle. These stations maybe independently owned stations or new car dealers. Because of their specialized knowledge, consumers seeking repair services from these shops and do not necessarily inform them when their vehicle has failed a smog inspection. The proposed Repair-Only station license seeks to fix this disconnect.

With this proposal, qualifications will be targeted specifically to the job of performing inspections and to the job of performing smog-related diagnosis and repairs. Candidates seeking an Inspector license will need to meet minimum requirements related to inspection. In part, this will include knowledge of engine and emissions control systems to the extent necessary to perform quality and accurate inspections. The training will be improved and completely focused on inspections. Inspector candidates will not be required to have experience or extensive training in the area of diagnosis and repair. As previously indicated, the training and testing requirements unreasonably attempt to cover the KSAs for both inspection and repair; consequently, neither is fully addressed.

The proposed Repair Technician license will require knowledge in and experience diagnosing and repairing vehicles. In order to determine the correct approach for diagnosing complex and integrated vehicle systems, a technician must have the ability to analyze the reason why a vehicle has failed an inspection. This will help ensure repairs are successfully performed. At present, there is no experience requirement to become a licensed “test-and-repair” technician. Future Repair Technicians will need at least two years repair experience or a combination of education and experience to qualify. These requirements generally align with requirements set by Automotive Service Excellence (ASE), a national automotive repair organization for certification in the area of advanced

diagnosis and repair. ASE is the most recognized standard throughout the automotive repair industry. Additionally, H&S 44045.5 (a)(2) requires individuals to have a minimum of two years repair experience.

Establishing licenses appropriate to the job requirements will also result in better license examinations. The current examination is limited because the formal occupational analysis weights both the job of inspecting and repairing vehicles under one license. This approach does not thoroughly cover the tasks associated with inspecting and repairing vehicles. Focusing the examination for each job will help ensure individuals have a complete understanding of the job requirements and only qualified technicians and inspectors become licensed.

In addition to realigning the license classifications, this proposal eliminates the existing Intern Technician license and the Basic and Enhanced Area technician designations. The Intern license is valid for one term and intended to introduce individuals to diagnosis and repair. However, over the years the industry has shown essentially no interest, with only a few individuals choosing this licensing path. This was discussed at the industry and public workshops and interest remains low.

The Basic and Enhanced Area designations correspond to the areas of the state where the Basic two-speed idle tests or Enhanced loaded-mode tests are administered. When these designations were established it was thought that repairs related to a loaded-mode test failures would be far more complex than two-speed idle failures and require special enhanced abilities. As it turns out, the same skills apply in both areas and that repairing the vehicle back to the original operating parameters takes care of the problem, regardless of the test type. There is no longer a need for the Basic and Enhanced Area designations. Conducting the two-speed idle and/or loaded-mode tests is a matter of properly following prescribed standards and procedures.

Ultimately, several paths to licensure will be available under this proposed regulation. Candidates will be able to choose the path that best suits their needs: Inspector, Repair Technician, or both. Experienced technicians will choose a path related to their existing knowledge and ability, and inexperienced candidates who ultimately wish to repair vehicle emission failures will have an incentive to go to school before or while gaining the experience needed to become a skilled technician. Those who wish to only inspect vehicles will have a license class that meets their business needs as well. Under this proposal an Inspector will not be limited to work in a Test-Only station, rather individuals who possess an Inspector license may conduct inspections at a licensed Smog Check Test-Only station or Test-and-Repair station.

It is important to note that the licenses for currently licensed Test-and-Repair technicians will remain valid through their normal term. At the time of license renewal, existing licensees will select the license or combination of licenses that best suits their needs and become licensed under the new designation.

Station Licenses

Like technician licenses, the Test-and-Repair station licensing requirements were established at a time when the technology for the automobiles was relatively simple, as compared to modern vehicles. Technological advancements and, to some extent, the addition of Test-Only stations into the Program have now left the structure of a single Test-and-Repair station license obsolete. As with the proposed Repair Technician license, a Repair-Only station license will align the Program's licensing structure with industry best practices. As previously mentioned, this will provide shops the flexibility to choose a license that best represents the services they provide.

- Test-Only - Consumers whose vehicles fail inspection may seek repairs from their regular repair shops without necessarily informing the shop of their Smog Check failure. As with any defined service or product, many consumers shop for the best price - in this case, the price of an inspection. Consumers often select these shops because they are the local experts who specialize in the repair of their particular brand of vehicle. Unfortunately, specialty shops, independents and new car dealers, are generally not licensed to repair smog failures. (The shift to a specialized repair market is discussed below.) This consumer choice occurs whether the station performing the initial inspection is a Test-Only or a Test-and-Repair station. However, Test-Only stations now inspect more than 60 percent of the vehicles subject to inspection. Because Test-Only stations are prohibited from doing repair work, consumers are left to find a repair facility and naturally select a shop which they are most familiar, even if the facility is unlicensed to perform smog-related repairs. A licensing structure that fails to reflect industry dynamics puts consumers at higher risk of low quality repair work.

Of the 35,000 automobile repair dealers registered by BAR, only about 5,400 are currently licensed to perform smog-related repairs. This leaves consumers in a difficult position, where in some cases it may be difficult to locate a repair station licensed to perform smog-related repair work. Under this proposal, the addition of a Repair-Only station license will help alleviate this concern and at the same time bring quality stations into the Program.

- Specialized Repair Market - Advancements in technology have made vehicles better and more efficient, while at the same time more complex. Repairs now require more in-depth knowledge and more sophisticated equipment than at any time. Advancements in technology have led the industry toward a more specialized repair market. While there are many good general purpose shops operating, the effort to keep pace with advancing technology under one roof has become more difficult. As a result, many shops now choose to specialize in a particular brand of vehicle or, in some cases, certain types of vehicles (e.g., diesel-powered vehicles.) For the most part, these shops focus on repair and the current Test-and-Repair station license does not fit their business model.

On Board Diagnostic II (OBDII) technology also plays an important role with regard to specialized repairs. With OBDII technology, vehicles are typically repaired to correct faults detected by the on-board system. These faults are not limited to emission controls systems alone, but rather, any condition that causes or could cause the vehicle to emit harmful emissions. This means that many non-traditional emissions repairs now fall under the category of smog-related repairs, including automatic transmission repairs. Once again, these repairs are often performed by specialty shops. Today, approximately 66 percent of the vehicles subject to a Smog Check inspection are OBDII equipped. The OBDII vehicle population will continue to grow and, at some point, the inspection for many of these vehicles will be solely OBDII based. This underscores the need for a Repair-Only station license.

- Four and Six Model Year Exemptions - Technology has also made new vehicles cleaner, effectively reducing emission levels. As a result, in 2005, the California Legislature exempted new vehicles from change of ownership inspections for the first four model years and from biennial inspection for the first six model years. These exemptions impacted the smog inspection market for new car dealers and it no longer made sense for some dealers to be a Test-and-Repair station. However, these same dealers remain responsible for warranty work related to smog failures. A Repair-Only station license will harmonize with the new car dealers' warranty responsibilities. As previously discussed, some consumers may seek specialized expertise for non-warranty repairs.
- Station Equipment - The proposed Repair-Only station will be required to have engine diagnostic equipment and repair tools for diagnosing and repairing engine ignition systems, fuel systems, emission control systems, computer engine control systems, and other related components for each vehicle type that the station diagnoses and repairs. This will include the minimum equipment required for a Test-and-Repair station, with the exception of equipment required to inspect and certify vehicles under the Program.

Some concern was raised at the industry workshops about the lack of a gas analyzer requirement. Specifically, Repair-Only stations that do not have a gas analyzer will not be able to properly repair tailpipe failures. This dynamic has existed in other states operating centralized (government run) programs for many years. In these programs, inspections are conducted at state-contracted locations using equipment and test modes completely different from what is available in the repair industry. BAR contacted eight of these states and found that none of them required gas analyzers; these states have found that the market takes care of itself. In other words, stations with gas analyzers market themselves to motorists who fail a tailpipe inspection. Also, in many cases the failures are repaired without the use of a gas analyzer.

It is important to note that a tailpipe emission failure is not a problem, but rather a symptom of a problem. Often, particularly for vehicles with on-board diagnostic

systems, the problem can be indentified and repaired without the use of a gas analyzer. Essentially, the technician repairs the vehicle back to the original parameters and the emission failure is corrected. In some cases, the lack of an emissions analyzer may actually result in a better repair. This is because a technician can become reliant on the analyzer to adjust a vehicle's emission controls just enough to pass the inspection. It is also important to note that 1996 and newer vehicles equipped with OBDII fail from tailpipe emissions at a rate of about 1.2%. Even in these cases, the vehicle manufacturers' diagnostic processes use the OBD system as the primary method to diagnose failures.

With this said, it is understood that for some less experienced technicians repairing emissions failures for some vehicles without a gas analyzer may be challenging. This is especially true with older non-computer controlled vehicles. Like any repair, stations must assess whether they have the equipment and expertise needed to make the repairs.

UNDERLYING DATA:

Technical, theoretical or empirical studies or reports relied upon:

- February 6, 2009 COMIRA Report, *Comparative Analysis of Current Training and Proposed Training Initiatives for Smog Check Technicians*.
- November 18, 2008 COMIRA Presentation, *Analysis of Current Requirements for Smog Check Technicians*.
- February, 2009 Donnoe & Associates, Inc. Report, *Job Analysis Update for Basic and Advanced Smog Technicians for the Bureau of Automotive Repair, State of California*.
- Bureau of Automotive Repair Presentation, *Smog Check Licensing Restructure*.
- Excerpts of the Uniform Guidelines on Employee Selection Procedures Code of Federal Regulations Title 29, Part 1607.
- Bureau of Automotive Repair Executive Summary Report 2010 - first quarter

Business Impact:

This regulation will not adversely impact businesses. This initial determination is based on the following facts, evidence, documents, or testimony:

The proposed regulations realign the Program license structure with the best practices of the marketplace. They have no influence on the number of vehicles being tested or repaired. Stations and technicians will have expanded options for licenses that better fit their business needs and/or personal ambitions.

Smog Check Technician Licenses

This proposed action will create a Repair Technician license and Inspector license to better represent the job description of the tasks performed by individuals employed in the Smog Check industry. For instance, some technicians may choose to work at a Test-Only station where extensive knowledge of repair work is not necessary and not part of the job duty. Others may choose to pursue work at a Test-and-Repair station; these technicians may perform emission-related repairs on vehicles failing an inspection. These proposed changes will allow technicians to customize their license based on their job requirements and when applicable, work toward a more advanced license classification.

Future candidates who wish to obtain both the Inspector license and the Repair Technician license will be subject to two examination fees. Currently, candidates pay one \$45 examination fee for the single Test-and-Repair examination. Upon implementation of these proposals, candidates would pay an examination fee for each separate exam.

The state license application fee will not change. A single application and fee will be assessed regardless of whether the candidates are applying for the Inspector license, Repair Technician license, or both.

Smog Check Station Licenses

California law requires Smog Check inspections and repairs to be performed by licensed stations using qualified technicians. Currently, a person or entity can be licensed to operate a Smog Check Test-and-Repair and/or Test-Only station. The Bureau proposes the addition of a Repair-Only station license. This license classification will provide more choices for automotive repair dealers to become licensed to perform emission-related repair work. It will also provide the flexibility for licensed Test-and-Repair stations to become a Repair-Only station and focus completely on vehicle emissions repairs.

Specific Technologies or Equipment:

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Set forth below is the alternative that was considered and the reason it was rejected:

BAR considered taking no action. However, to improve the effectiveness and efficiency of the Smog Check Program, the license classifications that support the Program must appropriately represent actual job tasks and align with best practices of the automotive inspection and repair industry and marketplace. Not implementing

these changes would continue the disconnect between a Smog Check stations purpose and a technicians role at the station and ultimately underserved consumers who are dependent on the Program.